



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1992

Mr. James M. Martin
Small, Craig & Werkenthin
Suite 1100, 100 Congress Avenue
Austin, Texas 78701-4099

OR92-241

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15433.

The Hansford County Hospital District, which you represent, has received a request relating to the compensation received by its employees. Specifically, the requestor seeks "a list, by name of all Hansford Hospital administrators, and employees, their salaries, and the benefits, i.e. hospitalization, schooling, service organization dues, mileage, etc., paid to each one."¹ You claim that release of the requested information would infringe upon the employees' privacy rights. You state:

Our reasoning is that this would invade the privacy of each employee, especially considering the fact the individual evaluations determine salaries, bonuses, etc. Of course, if budgetary line items cover one position, then that is an open record. Also, budget items collectively treated, such as nursing salaries, professional activities, dues, etc, are open records. We

¹Please note that if such a list does not exist in the form requested, the district is under no obligation to compile it. See Attorney General Opinion JM-672 (1987); Open Records Decision No. 467 (1987). However, the school district is obligated to make a good faith effort to relate the request to information which it holds, Open Records Decision No. 561 (1990) at 8, or to advise the requestor as to the kinds of records available to assist her in narrowing her request, Open Records Decision No. 87 (1975) at 3.

feel that individual employee disclosure would invade individual privacy and cause personnel unrest. Again, salaries are based on performance and tenure; employees and the public accessing this personal information could prove managerial [sic] divisive and problematic.

Information protected by common-law or constitutional privacy interests is excepted from required public disclosure by section 3(a)(1) of the Open Records Act.

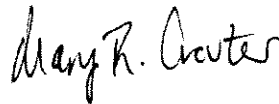
Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. The test for constitutional privacy involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Id.* The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. Open Records Decision No. 447 (1986) at 4. In Open Records Decision No. 455 (1987), this office held that common-law privacy does not protect the names or salaries of public employees from public disclosure. Clearly, an employee's name and salary do not fall within the ambit of any of the four zones of constitutional privacy. Accordingly, we conclude that the names of the hospital administrators and salary information may not be withheld under section 3(a)(1) of the Open Records Act and must be released.

You advise us that a list in the form requested does not exist and have not submitted any other records for our review. Consequently, we are unable to examine any documents to determine whether any of the records which might provide requested information are excepted from required public disclosure by section 3(a)(1). We note, however, that such records may contain information made confidential by law. Although financial dealings between an individual and the governmental bodies are matters of public interest and are ordinarily not within the protection of common-law or constitutional privacy, Open Records Decision No. 590 (1991) at 3, information about an individual's financial status and past financial history is sometimes excepted under section 3(a)(1). When information about participation in a deferred compensation program or health insurance program depends upon aspects of an individual's financial background or involves an

individual's financial decisions, such information must be excepted from required public disclosure by common-law privacy. Open Records Decision No. 600 (1992); *see also* Open Records Decision Nos. 545 (1990) (excepting information relating to an employee's participation in a deferred compensation plan); 373 (1983) (excepting individuals' "background" financial information provided in applications for housing rehabilitation grants). Also, information about a person's illnesses, operations, physical handicaps, or prescription medications is generally excepted by common-law or constitutional privacy and therefore excepted under section 3(a)(1) of the Open Records Act. Open Records Decision No. 455.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-241.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Ref.: ID# 15433

cc: Ms. Janie Jeffries
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